

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5128 of 1999

to

FIRST APPEAL No 5173 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

RANEK NARAN

Appearance:

Mr Samir J Dave, AGP for Petitioners

MR KL DAVE for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE D.P.BUCH

Date of decision: 08/08/2000

ORAL (CAV) JUDGMENT (per D P Buch, J)

All the aforesaid First Appeals have been filed by the abovenamed appellants challenging the judgments and awards dated 29.12.1998 by the learned Joint District Judge at Junagadh in different Land Acquisition Reference Cases being LAR Nos. 369 to 373, 388 to 396 and 467 to 498 of 1988. All the references are relating to village Bhadiyadar in Una Taluka of Junagadh District. They relate to Land Acquisition Cases No.24/82, 25/83 and 8/85. Though the Land Acquisition cases were different and though the Land Acquisition References are not continuous, the learned Judge has disposed of the aforesaid group of LAR cases by common judgment and award by consolidating all of them in three different groups.

2. The first group arises out of Land Acquisition case No.25/83 relating to LAR No.369/88 to 373/88. They relate to First Appeal No.5128/99 to 5132/99. The second group arises out of Land Acquisition Case No.24/82 relating to LAR No.388/88 to 396/88 and the connected First Appeal Nos. are 5133 to 5141 of 1999. The third group arises out of Land Acquisition Case No.8/85 relating to LAR No. 467/88 to 498/88. The connected First Appeal Nos. are 5142 to 5173/99.

3. For the sake of convenience, the first group arising out of LAQ case No.25/83 will be hereinafter referred to as 'first group'. The second group arising out of LAQ case No.24/82 will be referred to as the 'second group'. The third group arising out of LAQ case No.8/85 will hereinafter be referred to as the 'third group'.

4. Though the matters are in three groups and though the judgments and awards are common for all the three groups, the evidence appears to be recorded separately for each group. This can be gathered from the R & P of the trial court.

5. The aforesaid lands were required for the public purpose namely; Machhundari Irrigation Scheme. Therefore, the Land Acquisition Officer undertook the required process by issuing notification under section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') which was published in the Government Gazette on different dates between 1983 and 1985. The Land Acquisition Officer has undertaken the remaining required

procedure and at the completion of the process, award was passed in each of the three groups. The dates of award in these three groups are 27.11.1984, 31.12.1983 and 29.3.1988 respectively. It appears from the record that the respondents sent notice under section 12(2) of the Act and after completion of the remaining process when the awards were passed as aforesaid, the respondents abovenamed felt dissatisfied by the award of the Land Acquisition Officer and have made application for referring the applications to the District Court under Section 18 of the Act. Accordingly, the matters were referred to the District Court. It appears that the Land Acquisition Officer had granted compensation at Rs.90/- per Are for irrigated land and Rs.60/- per Are for non-irrigated land. The claimants felt that the compensation awarded was too low and, therefore, the aforesaid applications were made by them for referring the matter to the District Court under Section 18 of the Act. As said above, the matters were referred and they were registered as Land Acquisition Reference Cases as narrated hereinabove.

6. Notices were issued to the present appellants. They appeared before the Reference Court and filed objections-cum-written statement. There, they contended that the compensation awarded was just and adequate and, therefore, there is no need to increase the amount of compensation. They also contended that the present respondents were served with notice under section 12(2) of the Act and the respondents did not prefer application for reference under Section 18 of the Act to the Collector within six weeks from the date of receipt of notice. The appellants contended that the references were otherwise time barred and, therefore, they could not be entertained. Necessary issues were framed by the learned Judge at Exh.6. After recording evidence and considering the evidence and arguments before the him, the learned Judge found that the compensation awarded by the Land Acquisition Officer was on lower side and, therefore, the learned Judge passed judgment and award holding that the respondents were entitled to higher amount of compensation. At the same time, the learned Judge also found that all the references were within limitation and, therefore, he negatived the said contention of the appellants.

7. Feeling aggrieved by the said judgments and awards of the learned trial Judge, the appellants abovenamed have preferred these appeals before this Court under Section 54 of the Act read with section 96 of the Code of Civil Procedure, 1908. It has been mainly

contended here that the learned Judge has erred in holding that the references were filed within limitation. That the learned Judge has also erred in holding that the compensation awarded is on lower side. That the learned Judge has erred in enhancing the amount of compensation. That on the whole the judgments and awards of the Reference Court are illegal and erroneous and deserve to be quashed and set aside. The appellants, have, therefore, prayed that the present appeals be allowed and the impugned judgments and awards of the Reference Court be set aside. It is also prayed that the application for reference filed by the respondents be dismissed with costs all throughout.

8. At the admission stage, notices were issued to the other side. Mr K L Dave, learned Advocate appeared on behalf of the respondents whereas Mr Samir Dave, learned AGP appeared for the appellants. we have heard the learned Advocates for the parties and we have been taken through the Records and Proceedings including oral evidence as well as documentary evidence by both the learned Advocates. During the course of arguments, it was found that there was substance and force in the arguments of the appellants that the references were time barred and, therefore, they restricted their arguments to the point of limitation and that was the only issue argued by them before us. In view of the aforesaid position, this Court may not touch the merits of the case and the Court should restrict its decision only on the point of limitation. Since the learned Advocates for the parties have restricted their arguments only on the issue of limitation and since they did not address us on other aspects of the case and since the learned Advocates requested us to restrict our findings on the issue of limitation, we restrict our findings and decision only on the point of limitation.

9. On appreciation of evidence and arguments, we are of the decision that the reference applications were time barred considering the provisions of section 18 read with section 12(2) of the Act and therefore, we find that the learned Judge has erred in holding that the applications for reference were filed within limitation. Reasons for the aforesaid findings are as follows:

10. As said above, the matters have been divided into three groups and, therefore, we are also required to deal with them separately in three groups. If we take up the third group, it relates to First Appeals No.5142 to 5173/99 arising from LAR No. 467 to 498/88 which went to the Reference Court from LA case No.8/85.

11. So far as this group of concerned, as said above, learned Advocates for both the parties have taken us through the R & P of the reference court. We also examined the R & P with the assistance of both the learned advocates.

11.1. A perusal of the reference applications submitted by the respondents in the aforesaid matter, it is apparently clear that these reference applications were filed by them before the Collector on 25.8.1988. This date has been indicated by the learned Advocate for the respondents appearing before the Reference Court. There they have positively stated that the respondents have received notice under section 12(2) of the Act. It is true that the date of receipt has not been indicated but on the fact of receipt of notice under section 12(2), has been admitted positively by the respondents in para 2 of the said application. There was no dispute between the parties on the aforesaid aspects of the case.

11.2. As said above, the appellants have taken up the contention about the limitation. The parties have agreed this aspect also. There is an issue about the limitation and there is no dispute between the parties regarding the same. This would show that there was pleading having contention of limitation. When there was an issue relating to limitation framed by the reference court, the parties were aware of the position.

11.3. We can find that along with the forwarding letter, the Collector had sent certain other information to the District Court, along with the applications of the respondents for referring the matter to the District Court. There we find the information at page 57 onwards which shows that the notices under section 12(2) of the Act were sent on 29.4.1988 and they were served on 14.5.1988 on the respondents of this group. This document was not in dispute before us when M/s. Dave and Dave, learned Advocates argued the matter on the issue of limitation. This would positively show that the notices were under section 12(2) were served upon the respondents of this group of 14.5.1988. It is an admitted position that the respondents had submitted their applications for referring the matter under section 18 of the Act on 25.8.1988. Even the application Exh. 1 before the reference Court also indicates the said date i.e. 25.8.1988. Section 18 of the Act clearly states that when the notices have been served under section 12(2) of the Act then the applications for reference are required to be submitted before the Collector within six weeks from

the date of receipt of the notice under section 12(2) of the Act. It would be worthwhile to refer and reproduce the said provision of section 12(2) of the Act as follows:

"12(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made."

12. A bare reading of the text of section 12(2) read with section 18 of the Act makes it clear that the application for reference are required to be filed within six weeks from the date of receipt of notice under section 12(2). As said above, the notices were served on 14.5.1988 but the respondents of this group have submitted application for reference on 25.8.1988. This would clearly show that the reference applications have been filed beyond the period of limitation of six weeks. In fact, these applications were required to be submitted before 30.6.1988 but they have been submitted on 25.8.1988. This clearly shows that these applications were time barred and the Collector should not have referred the matters to the District Court.

13. The learned Judge has dealt with this issue in para 13 of the judgment. He has given finding that the date of service of notice under section 12(2) of the Act has not been proved and the Land Acquisition Officer has not served the respondents with notice under section 12(2) of the Act. Accordingly, the learned Judge came to the decision that the applications for reference were within limitation. Since the said discussion can be found only in one para, it would be worthwhile to reproduce the text of the relevant portion of the judgment of the Reference Court as under:

"Regarding point of limitation, as the claimants have received compensation without objection, therefore, claimants are not entitled for further compensation, that is the argument of D.G.P. What is the date of notice under sec. 12(2) which has been served to the claimants has not been mentioned and at the time of declaring the award, LAO has not given notice to the claimants and after receiving the copy of award, within six weeks, reference petitions filed considering the judgment of 1987 GLH (UJ) and 1998 (2) LAL Gujarat-79, petitions have been sent to the reference court by the Collector. Therefore, petition is out of time, that fact is not proved

by the State and therefore, all the reference petitions are in time as the reference petitions are sent by the Collector to the Court for determining market value."

14. As said above, there was evidence before the reference court to show that the notices were served on the respondents on 14.5.1988. On the other hand, the respondents have admitted in their applications Exh-1 that they have received notices under section 12(2). So the service of notice was admitted and date of service was proved by the documents on record.

15. Mr Masri Devsi, has given oral evidence on behalf of the respondents at Exh. 132 before the reference Court. On going through the said oral evidence of this witness, we find that this witness has not disputed the fact of service of notice. In other words, this witness has not stated that notice under section 12(2) was not issued to and served upon him. Shri Bhupatbhai Jamnadas Chaniyara, who was working as Dy.Mamlatdar in the office of the Collector at the relevant point of time, has positively deposed in his evidence at exh. 134 that notice under section 12(2) was served upon the respondents. The same fact was reiterated by him in his cross-examination also. This evidence of this witness has not been challenged during the cross-examination and it has not been put to him that he was not telling the truth and notice under section 12(2) was neither issued to the respondents nor was served upon them. So the fact that notice under section 12(2) was issued, has been deposed by this witness on oath and this deposition has not been challenged during the cross-examination. This means even during the oral testimony, the respondents have not challenged issuance of notice under section 12(2) of the Act.

16. A perusal of an important piece of evidence at Exh.73 shows that notices under section 12(2) have been served upon the respondents of this group. It also indicates that these notices were served upon the respondents on 14.5.1988. This document was not seriously disputed during the course of arguments.

17. There is also documentary evidence to show that the final payment was made to the respondents. These documents are exhibited from exh.96 onwards. It appears that different amount of compensation has been paid to different respondents on different dates. But the record shows that the final payment has been made on 19.5.1988. Even if it is the case of the respondents that the

applications for reference under Section 18 of the Act were filed before the Collector within six months from the date of the award, it is also on record that they were filed beyond the period of six weeks from the date of service of notice under section 12(2). For this purpose, it would be worthwhile to refer provisions of Section 18 of the Act which reads as follows:

"18. Reference to Court - (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken,

Provided that every such application shall be made,

(a) If the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of Collector's award;

(b) In other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

The aforesaid provision makes it clear that the applications for reference under section 18 of the Act are required to be filed within six weeks from the date of receipt of notice under section 12(2) of the Act. Since this has not been done, the applications for reference are apparently and ultimately time barred. Firstly, there is no provision in law enabling the Collector to condone the delay. The Collector has also not condoned the delay. The applications were received by the District Court and even the District Court has no power or jurisdiction to condone the delay. Even the District Court has not condoned the delay. So the fact remains that the applications were time barred but the delay could not be condoned by any authority. Therefore, the court below had absolutely no power or jurisdiction to entertain the time barred reference cases before him

which were filed beyond the period of limitation.

18. So far as the second group is concerned, it arises out of LAQ case No.24/82. It relates to F.A. No.5133/99 to 5141/99 arising out of LAR No.388 to 396/88.

19. On going through the records, it was not possible for us to find out the date of service under section 12(2) of the Act. Similar is the case with respect to another first group relating to FAs no. 5128 to 5132 of 1999. This group also does not show any evidence regarding service of notice under section 12(2). However, the difference between these two groups is that in the second group, the petitioners have stated in their application exh.1 that they have not been served with notices under section 12(2) whereas the respondents have admitted in the first group that the notices under section 12(2) were served upon them. However, there is no evidence with respect to the date of service of the said notices. Even Mr Bhupatbhai J Chaniyara, Dy.Mamlatdar rendering evidence on behalf of the appellants, has stated in his examination-in-chief as well as in cross-examination that the respondents were served with notices under section 12(2) but he has not given the date of service of the notices. It also appears that the sheet showing service of notice under section 12 (2) has not been submitted in these two groups. It is, therefore, not possible for us to hold that the respondents were served with notices under section 12(2) and that the applications for reference have been submitted beyond the period of six weeks from the date of service of notice under section 12(2) in these two groups. At the same time, the appellants have contended that final payment was made to the respondents by the appellants on the strength of the award passed and there is evidence to show the date of final payment. That therefore, that should be considered to be the date of knowledge of the respondents with respect to the date of award. In other words, the learned AGP Mr Samir Dave has argued that the respondents were paid final amount of compensation on 26.6.1985 in the first group and the final payment was made on 24.9.1987 in the second group. The reference applications were made in the first group on 17.11.1988 and they were submitted in the second group on 26.8.1988. So far as the dates are concerned, the same are not in dispute at all before us. Even the respondents themselves show that they have been paid final amount of compensation on 17.11.1988 and 26.8.1988 respectively.

20. Considering the aforesaid evidence on record, it is very clear that the respondents did not go to the Collector with the applications for reference to the District Court under section 18 of the Act within six months from the date of knowledge of the award made under section 11 of the Act. Considering the aforesaid oral and documentary evidence on record, it is apparently clear that so far as the first group is concerned, the applications for reference under Section 18 of the Act have been submitted beyond the period of six months from the date of knowledge of the award. In the first group, final payment was made on 26.6.1985. In the second group final payment was made on 24.9.1987. In both the groups, applications for references have been filed beyond the period of six months from the date of knowledge of the award. This apparently makes it clear that when the payment was made to the respondents, the respondents knew that the final awards have been passed and final payment was being made to them. Therefore, they ought to have made applications for reference within six months from the date of final payment which they have not done. Exh. 24 in the first group shows that the final payment was made on 26.6.1985. Similarly Exh.32 to 36 in the second group show that the final payment was made on 24.9.1987.

21. On the aforesaid set of evidence M/s. Dave and Dave, learned Advocates have agreed to the position that the reference applications have not been filed in all the matters within the period of limitation. In the first two groups, applications have not been made within six months from the date of knowledge of the passing of award. In the third group, applications have not been submitted within six weeks from the date of service of notice under section 12(2). Section 18 of the Act makes it clear that either applications should be made within six weeks from the date of service of notice under section 12(2) or they should be filed within six months from the date of knowledge of the award. Therefore, in the first two groups, six months period has gone and therefore, the applications were time barred and in the third group six weeks period has gone and, therefore, the reference applications were time barred. On the aforesaid oral and documentary evidence on record, M/s.Dave and Dave, learned Advocates for both the sides agreed, consented and conceded that all the reference applications were time barred and there was no dispute about the same and therefore, they did not press the issue of the merit of the case. As said above, time barred references could be entertained by the District Court. Neither the District Court nor the Collector had

power or jurisdiction or authority to condone the delay nor they have condoned the delay. In this view of the matter, we are of the considered decision that all the applications were time barred. As said above, the Reference Court has observed that there was no evidence to prove the date of service under section 12(2) of the Act but while observing as aforesaid, the Reference court has clearly erred in not taking into consideration the aforesaid evidence at Exh.73 showing proof of service of notices under section 12(2), in the third group. Same way, the learned Judge also committed serious illegality in not considering the fact that there was evidence to prove the date of knowledge of the respondents with regard to the passing of the award. The learned Judge has clearly overlooked oral as well as documentary evidence showing and proving that the applications were made after a span of six months from the date of knowledge of award in the first two groups. Therefore, the appellants are right in arguing that the applications were time barred and they could not be entertained by the learned Judge of the Reference Court. We are in full agreement with the arguments advanced on behalf of the appellant by Mr Samir Dave, learned AGP. On the aforesaid aspects of the case we also hold that the references were time barred and they could not be entertained by the reference court. As said above, Mr Dave, learned Advocate on behalf of the respondents in all the matters also consented, conceded and agreed that the reference applications were time barred and there was no need to argue the matter on merit.

22. In the facts and circumstances, when the reference applications were time barred, they could not have been entertained by the Reference court. Consequently, the judgment and awards made by the reference court have to be treated to be illegal and erroneous and hence they deserve to be set aside. We find substantial force of law and facts in the arguments of the learned AGP for the appellants on this point. In other words, these appeals are required to be allowed only on the point of limitation. We, therefore, do not touch other factual aspects touching the quantum of amount of compensation as per the request of the learned Advocate for the parties M/s.Dave & Dave.

23. In the aforesaid view of the matter, all these appeals are allowed. The impugned judgments and awards of the reference court in all the aforesaid LAR cases are set aside. The applications of the respondents for reference under section 18 of the Act are ordered to be

dismissed. In other words, all the LAR cases are ordered to be dismissed. In case any additional amount has been paid to the respondents, they shall return the said amount to the appellants and the appellants will be at liberty to recover the same from the respondents. Considering the facts and circumstances of the case, there shall be no order as to costs in all the appeals. The parties shall bear their own costs in this court as well as in the reference court. Office to draw decree accordingly.

[M H Kadri, J.]

msp [D P Buch, J.]